

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RENEE M. BRIGGS,

Plaintiff,

-against-

SCO FAMILY OF SERVICES, MEGAN RYAN,  
BONNIE ISSAC, ALLISON PACHECO,  
JESSICA FISHSTEIN, and LORI HANNIBAL,

Defendants.  
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FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 16 2018 ★

LONG ISLAND OFFICE

**ORDER**

16-CV-3882 (JFB)(SIL)

JOSEPH F. BIANCO, District Judge:

On February 15, 2018, Magistrate Judge Locke issued a Report and Recommendation ("the R&R," ECF No. 33) recommending that the Court grant defendants' motion to dismiss for failure to state a claim<sup>1</sup> (ECF No. 26) and grant plaintiff leave to amend the complaint. Defendants served the R&R on plaintiff via email and first class mail on February 15, 2018. (ECF No. 34.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of receipt of the R&R. (R&R 17.) The date for filing any objections has expired, and no objections have been filed. For the reasons below, the Court adopts the thorough and well-reasoned R&R in its entirety, grants the motion to dismiss, and grants plaintiff thirty (30) days to amend her complaint.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court

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<sup>1</sup> Defendants also moved to dismiss for lack of federal subject matter jurisdiction under Rule 12(b)(1). Construing plaintiff's complaint to raise the strongest arguments it suggests, Judge Locke correctly concluded that it was proper to exercise federal jurisdiction over plaintiff's complaint, and denied that portion of defendants' motion.

review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, the Court may excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S. at 155)).

Although the parties have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the Complaint, the motion papers, and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss for failure to state a claim (ECF No. 26) is granted.

IT IS FURTHER ORDERED that plaintiff shall have thirty (30) days from the date of this Order to file an amended complaint. Plaintiff is warned that failure to file an amended complaint by that time will result in the Court dismissing the federal claims with prejudice, and dismissing any state law claims without prejudice to refile in state court.

IT IS FURTHER ORDERED that defendants serve a copy of this Order on plaintiff.

SO ORDERED.

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JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

Dated: March 16, 2018  
Central Islip, NY